REGISTERED SPEED POST



## GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) 8th Floor, World Trade Centre, Centre – I, Cuffe Parade, Mumbai-400 005

F.No. 373/04/B/14-RA \ \85

Date of Issue O(.OS.20)8

ORDER NO. \$23,2018-CUS (SZ) / ASRA / MUMBAI/ DATED \$7.04.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Krishnan Chonaiyan

Respondent: Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs

Act, 1962 against the Order-in-Appeal C.Cus No. 1746/2013 dated 26.11.2013 passed by the Commissioner of Customs

(Appeals) Chennai.



## ORDER

This revision application has been filed by Shri Krishnan Chonaiyan (herein after referred to as the Applicant) against the order no C. Cus No. 1746/2013 dated 26.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

- 2. Briefly stated the facts of the case are that the applicant, a Singapore national arrived at the Chennai Airport on 08.12.2012 and was intercepted as he was attempting to pass through the Green Channel. Examination of his person and baggage resulted in the recovery of Assorted gold jewelry weighing 158.5 gms valued at Rs. 4,93,498/- ( Four Lac Ninety three thousand Four hundred and Ninety Eight). After due process of the law vide Order-In-Original No. 930/2012 dated 08.12.2012 Original Adjudicating Authority confiscated the gold jewelry under section 111 (d) (l) (m) and (o) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992. But allowed redemption of the gold jewelry for re-export on payment of a redemption fine of Rs. 2,40,000/- and also imposed penalty of Rs. 10,000/- under Section 112 (a) of the Customs Act, 1962.
- 3. Aggrieved by the order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No 1746/2013 dated 26.11.2013 rejected the Appeal.
- 4. The applicant has filed this Revision Application interalia on the grounds that;
  - 4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant is an eligible; Though a citizen of Singapore the Applicant is a person of Indian origin; He was wearing the gold jewelry and having stayed abroad for the past six months he is eligible passenger for concessional rate of duty under Notfn.03/2012; Even assuming without admitting he has not declared before the officers it is only a technical fault; He had brought the gold for his own use and purchased out of his earnings; He never concealed the gold chain and bracelet and he was wearing the same; He was wearing the gold jewelry and it was visible and hence the question of declaration does not arise;
    - 4.2 The Applicant further pleaded that as per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIS who flate inadvertently not declared; CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; That as per the department the

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Applicant was trying to evade duty amount of Rs. 49,000/-but the adjudicating Authority has imposed fine of Rs. 2,40,000/- and penalty of Rs. 10,000/- which is high and unreasonable.

- 4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 and prayed for reduction of redemption fine and reduced personal penalty for re-export.
- 5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where redemption for re-export of gold was allowed. Nobody from the department attended the personal hearing.
- 6. The Government has gone through the facts of the case. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the gold jewelry was not declared by the Applicant as required under Section 77 of the Customs Act, 1962. In order to avail concessional duty benefits the Applicant should have properly declared the gold. Thus, under the ACMINIM MASHANMAS circumstances confiscation of the gold is justified.
- 7. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold jewelry is claimed by the Applicant and there is no other claimant. The gold was not ingeniously concealed. There are no previous offences registered against the Applicant. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant, more so because he is a foreigner. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that a leasent track the matter. The impugned Order in Appeal that for needs to be modified with reduction in the redemption fine for re-export.

- 8. Taking into consideration the foregoing discussion, the redemption fine in lieu of confiscation of the gold totally weighing 158.5 gms valued at Rs. 4,93,498/- (Four Lac Ninety three thousand Four hundred and Ninety Eight) for re-export is reduced from Rs. 2,40,000/- (Rupees Two Lacs Forty thousand) to Rs. 1,60,000/- (Rupees One lac Sixty thousand) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 10,000/- imposed is appropriate.
- 9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

(ASHOK KUMAR MEHTA) Principal Commissioner & ex-officio

Principal Commissioner & ex-officio Additional Secretary to Government of India

ORDER No 222/2018-CUS (SZ) /ASRA/MUMBAT

DATED 27.04.2018

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To,

Shri Krishnan Chonaiyan C/o S. Palanikumar, Advocate, No. 10, Sunkurama Chetty Street, Opp High court, 2<sup>nd</sup> Floor, Chennai 600 001.

Copy to:

True Copy Attested

SANKARSAN MUNDA Assit, Commissioner of Custom & C. Ex.

1. The Commissioner of Customs, Anna International Airport, Chennai.

2. The Commissioner of Customs (Appeals), Custom House, Chennai.

3. Sr. P.S. to AS (RA), Mumbai.

4. Guard File.

5. Spare Copy.

